either of them" must be construed to mean to preserve, to spare, or to retain a right existing anterior to the statute. Certainly the words "saving *his* right," in the absence of negative words, cannot mean to take away a right; they are the appropriate words, in a statute which gives a new remedy, but which intends at the same time to reserve a pre-existing right; by the new remedy a party may take his election to proceed upon the statute, or at the common law. The saving clause in the statute is cumulative, and in affirmance of the common law.

Motion in arrest of judgment is therefore overruled, and judgment must be entered upon the verdict.

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*In the Court of Appeals, State of New York.*

GATES *vs.* BROWER.

In an action for certain horses sold and delivered, it appeared that the defendant's wife had bought the goods, and given her own note for them; and that she had previously, and generally acted as his agent; and that he had made no objection to the purchase, but had used the horses as his own: held that there was evidence to go to the jury, of the husband's liability, notwithstanding the Married Women's Acts of New York.

This was an action to recover the value of a span of horses sold and delivered on the 5th day of October, 1848.

It appeared on the trial that the wife of the defendant bought the horses of the plaintiff, and gave her note for them, and that she had previously acted as the agent for her husband. The statement of the case appears in the opinion of the Court. The Supreme Court held that the defendant was not liable. The Court of Appeals reviewed the decision, and ordered a new trial.

*Graves & Wood*, for Appellant, cited 1 Esp. 142; 4 Wend. 465; 4 Barb. 222; 6 T. R. 176; 8 Mass. 336.

*O. Vandenburgh*, for Respondent.

MASON, J.—I think there was evidence in this case which should have been submitted to the jury to determine whether these horses were not in fact purchased by the wife acting in behalf of the defendant, and whether the purchase was not in fact his. There was

evidence from which a jury might justly have found such to be the case. There was evidence that Mrs. Brower acted as the agent of her husband, and of her authority so to act. She had for years generally transacted the mercantile business of the family, and had before given her note, which was taken up by the defendant. She seems to have conducted the law business for her husband; to have had a general supervision of the defendant's farm, and usually directed in regard to its management. And she was in the habit of doing all these things with the defendant's assent, express or implied. He knew of the purchase of these horses, and made no objection to it, but on the contrary, I think, ratified the purchase. The horses were used as a team on his farm, and he and his boys used them. All this was certainly very strong evidence to submit to a jury upon the question of the wife's agency, and of the defendant's ratification thereof, and should have been submitted to the jury. He is bound by her contracts in such cases from a presumed assent to the purchase. (2 Kent's Com. 145.) It is upon this principle that he is bound by such contracts of his wife respecting those matters about which it has been usual for her to contract, and him to sanction. (*Reeves' Domestic Relations*, 79.) This is upon the same ground that he would be bound if his servant had contracted for him. The liability proceeds upon the ground that he has constituted his wife his agent in the transaction. (*Bacon's Ab. Title Baron and Feme H. & J.; Reeve's Dom. Rel.* 79; 2 *N. H. Rep.* 176; 3 *Bibb*; 10 *John.* 38; 3 *Bing.* 170; 4 *Barb.* 222; 7 *How. Pr. R.* 105.) It was held in the case of *Pitts* vs. *Anderson*, (3 Bing. 170), that the husband was liable for articles furnished the wife when she was carrying on business in her name with his knowledge, though the invoices and receipts were in the name of the wife, and although she was rated for and paid the poor and paving rates. The same precisely is the case of *Lovett* vs. *Robinson*, (7 How. Pr. R. 105), where Judge Wilson held the husband liable.

The wife may not only act as the agent of her husband, but any subsequent acknowledgment or ratification of her acts by the husband is evidence, and equivalent to an original authority. (4 *Wend.*

465; 4 *Barb.* 222; *Bac. Ab., Title Baron and Feme, H.*) And it is said he tacitly ratifies and adopts her acts, when, having received the goods she has purchased, he does not return them. (1 *Campb.* 120 *Bac. Ab., Title Baron and Feme,* H. Vol. ii. p. 46, Bonvier's ed.) And it is said in books of very high authority, that if there is any evidence to show an assent of the husband, that it is a question for the jury to determine whether the debt was or was not contracted under his assent. (*Bac. Ab., Title Baron and Feme,* H.) The fact that the plaintiff took the note of the wife on the sale of these horses does not furnish such conclusive evidence that the purchase was not in fact for the benefit of the husband as to be incapable of being overcome by the other evidence in the case. (*White* vs. *Tyler,* 6 T. R. 176.)

The acts of 1848 and 1849 in regard to the rights of married women do not in any manner affect this case. The judgment of the Court ought to be reversed, and a new trial granted, for the refusal of the Court below to allow the case to go to the jury upon this question. Ordered accordingly.

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## *In the Supreme Court of Pennsylvania.*

### COMMONWEALTH *vs* JOHNSTON.

1. Special pleading before a Justice of the Peace, though not to be encouraged, is not unlawful, and when a defendant has pleaded specially, and the Plaintiff demurs to his plea, the facts therein alleged are regularly on the record, and become substantive ground of the judgment.
2. In a conviction under the Act of 22d April, 1794, for performing worldly employment on Sunday, it should appear what the work was for which the defendant was convicted, but as the whole record is to be taken together, it is sufficient if the description of the work appear in any part of it.
3. Driving an omnibus as a public conveyance daily and every day is worldly employment, and not a work of charity or necessity within the meaning of the Act of '94, and therefore not lawful on Sunday.
4. A contract of hiring by the month does not, in general, bind the hireling to work on Sundays, and if his work be such as the Statute forbids, an express agreement to perform it on Sunday will not protect him, for such a contract is void.
5. Though travelling does not in a legal sense fall within the description of worldly employment intended to be prohibited, yet the running of public conveyances on Sunday is forbidden by the Statute.